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Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

CARL P. SCHEIDEGG,

Petitioner

versus

SHIRLEY FERGUSON,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW HAMPSHIRE

PETITION FOR WRIT OF CERTIORARI

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June 25, 1990

QUESTIONS PRESENTED

1. Whether Rule 25(1)(b), N. H. Supreme Court Rules Annotated, is invalid for repugnance to the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, as applied to Petitioner in the State appeal in this case, wherein he raised questions as to the sufficiency of the evidence adduced at trial to support the grounds of divorce and custody and visitation orders, the property distribution, and the child support level actually decreed by the Superior Court, and the New Hampshire Supreme Court "summarily affirmed" on the merits with respect to these issues without any review of the transcript or other record of the proceedings

below, and this was Petitioner's only appeal allowed as of right under State law.

2. Whether New Hampshire Revised Statutes Annotated, Chapter 458-C, is invalid for repugnance to the Due Process and/or Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, as applied to Petitioner in his State divorce case, because it arbitrarily, capriciously, unfairly, and/or unreasonably mandates a fixed percentage of the non-custodial parent's adjusted gross income for "child support" regardless of the actual needs of the child or the child's accustomed level of support, regardless of the ability of the obligor to pay the fixed amount in his particular circumstances, and without allowing

deductions for the obligor's necessary living expenses, his costs of doing business, or the actual costs of his generating his particular income.

3. Whether Petitioner was denied his due process right to hearing before a court of competent jurisdiction by having the merits of his divorce, including substantial liberty and property interests, determined by a mere attorney "master" who was not a judicial officer nor possessed of authority to decide issues before the judicial branch according to New Hampshire law, where no judicial officer would hear or review disputed issues de novo or even review any record of trial proceedings before the master despite requests therefore by Petitioner.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Carl P. Scheidegg, Pro Se, respectfully prays that a writ of certiorari issue to review the judgment of the New Hampshire Supreme Court entered in the above-entitled cause on January 15, 1990. This Order is reproduced in the Appendix to this Petition, submitted separately,

at pages 1-2. [App. 1-2.]

OPINION BELOW

The one-page Order of the New Hampshire Supreme Court challenged herein was issued on January 15, 1990 as a "summary affirmance" without opinion, and without any review of the record as to the Federal claims raised in this Petition. The State court acted "in accordance with [N.H. Supreme Court] Rule 25(1)(b)" without any hearing. Order, App. 1. N. H. Supreme Court Rule 25(1) is reproduced at App. 41.

Petitioner timely moved for reconsideration in the State high court, citing the constitutional violation of determining sufficiency of the evidence respecting the questions "summarily" disposed of without any review of the evidence. See, Bundy v. Wilson, 815 F.2d 125 (1st Cir. 1987)(due process forbids such determinations under

N.H.S.Ct. Rule 25(1) when substantial liberty interests are at stake).

The Supreme Court of New Hampshire denied the motion for reconsideration without hearing or opinion in a one-page order dated February 27, 1990. See, App. 3.

Neither Order was published in any form. The unpublished N. H. Superior Court orders are reproduced at App. 4-40.

JURISDICTION

Upon the timely application of Petitioner, Justice Brennan extended the time for filing this Petition "to and including June 27, 1990." See, Order of this Court dated May 29, 1990.

This Petition is timely filed.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1257(3) and 2101(c), and Rules 13.1, 13.2, and 29.2 of this Court.

CONSTITUTIONAL PROVISIONS

This Petition involves claims arising under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, which prohibit deprivations of liberty or property without due process of law and the equal protection of the laws.

STATUTORY AND RULE PROVISIONS

The pertinent portion of Rule 25(1), N. H. Supreme Court Rules governing "Summary Disposition" is reproduced at App. 41. It is challenged on due process.

The full text of N.H. Revised Statutes Annotated [RSA] Chapter 458-C ("Child Support Guidelines") is set forth at App. 42-44. This Chapter offends both the Due Process and Equal Protection Clauses, and was challenged below on those grounds.

STATEMENT OF THE CASE

The basic facts and procedural history of this case, necessary for a determinantion of the questions presented in this Petition, are not in dispute.

That Petitioner timely and properly raised these Federal claims at every stage of the proceedings below cannot be legitimately contested.

Respondent wife [now] Shirley Ferguson filed for divorce in the Hillsborough County (Manchester, New Hampshire) sitting of the New Hampshire Superior Court, on December 26, 1986, case number 86-M-2103.

Numerous issues arose in the trial court as to custody of and visitation with the parties' two minor children, and with respect to division of the parties' marital estate and as to the proper level of child support to be paid by Petitioner, Carl P. Scheidegg, a career officer on full-time

active military duty with the United States Air Force as a Lieutenant Colonel.

The pertinent orders and decrees of the Superior Court disposing of these issues are set out verbatim in chronological order at App. 4-40. All of these orders were written, and all evidence in the case was heard, by a mere attorney, sitting as a non-judicial master under current State practice.

Petitioner timely and repeatedly demanded hearing, or rehearing de novo on disputed issues by a regular justice of the New Hampshire Superior Court, duly commissioned under State law as a judicial officer and exclusively empowered to determine issues before the judicial branch. His numerous motions in this regard were denied without hearing in the Superior Court, and not heard by the Supreme Court of New Hampshire. See, Orders of N.H. Supreme Court, App. 1-3, in

N.H.S.Ct. case no. 89-364.

Among the issues raised by Petitioner in his State Notice of Appeal in No. 89-364 was the unconstitutionality of the "marital master" system in New Hampshire matrimonial cases, where the litigants never see judge or jury, yet have their lives completely altered by a mere attorney sitting as a judge-for-a-day, and the invalidity under the Fourteenth Amendment of N.H. RSA 458-C ("Child Support Guidelines") which automatically and mechanically tax gross income for child support, with no consideration of the actual needs of the child, his accustomed level of support, or the ability of the obligor to pay in his particular circumstances and without allowing deductions for costs of generating the very income to be levied against.

When the New Hampshire Supreme Court summarily affirmed the decree on the questions here at issue, App. 1, overruling

Petitioner's sufficiency of the evidence challenges thereto, Petitioner timely filed a motion for reconsideration raising the Fourteenth Amendment due process concerns ennunciated in Bundy v. Wilson, 815 F.2d 125 (1st Cir. 1987)(N.H. Supreme Court may not apply its Rule 25(1) so as to deprive litigants of due process of law and fair access to available State appellate review). This motion was denied without hearing or opinion. App. 3.

The only hearing Petitioner was ever afforded in the State courts on the matters at issue herein was before a marital master who was as a matter of state law not a judicial officer, and was, rather, merely a private attorney sitting "[e]ffectively ...[as] a de facto judge." Cornforth v. Cornforth, 123 N.H. 61, 63, 455 A.2d 1049 (1983)(opinion of Charles Douglas, Assoc. Justice).

This constitutional grievance—lack

of any hearing before any court of competent jurisdiction—was ignored by both the Superior and Supreme Courts of New Hampshire. The trial courts are so backlogged with a virtual explosion of litigation that were a justice to be assigned to hear or even review the transcriptural record of divorce cases, virtually no other business could be conducted in the courts. This explains, but does not justify, the jurisdictional and hence due process defects in the State "master" system which allows complete determination of cases by non-judges with no judicial review of any kind in either the Superior or Supreme Courts, contrary to the hearing requirement of the Fourteenth Amendment.

The Superior Court even refused—and routinely so refuses—timely motions for production of the transcriptural record of proceedings before the master—

so disputed matters might be reviewed by a justice de novo. And the New Hampshire Supreme Court denied Petitioner's request for requisition of the transcript of trial proceedings for review by the Supreme Court in connection with the notice of appeal in No. 89-364.

This practice is not unique to this case, but is the routine in the New Hampshire courts in the current deluge of cases there pending.

REASONS FOR ALLOWANCE OF THE WRIT

Unless this Court takes action to correct the constitutional infirmities in the New Hampshire State courts complained of herein, more of its citizens will be deprived of fundamental liberties protected by the Fourteenth Amendment to the Great Charter. Moreover, the New Hampshire response to ever-increasing litigation

may be adopted by other States unless this Court disapproves same, or provides proper guidelines for the States to follow in the areas addressed below.

It is obvious that the New Hampshire Supreme Court has decided important questions of Federal law which have not been, but should be, settled by this Court, and that the State court has decided Federal questions in a way that conflicts with applicable decisions of this Court and of the United States Court of Appeals for the First Circuit in cases addressing the very State practices complained of herein. Rule 10.1(b) & (c), Rules of the Supreme Court of the United States (eff. Jan. 1, 1990).

I. THE DECISION OF THE SUPREME COURT OF NEW HAMPSHIRE TO SUMMARILY AFFIRM PETITIONER'S QUESTIONS IMPLICATING SUFFICIENCY OF THE EVIDENCE, IN HIS ONLY APPEAL ALLOWED AS OF RIGHT UNDER STATE LAW, WITHOUT ANY REVIEW OF THE TRIAL RECORD, CONFLICTED WITH THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT IN BUNDY v. WILSON, 815 F.2d 125 (1st Cir. 1987) AND CASES OF THIS COURT COLLECTED THEREIN, AND OFFENDED THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT WHERE SUBSTANTIAL LIBERTY AND PROPERTY INTERESTS WERE AT STAKE.

Petitioner had appealed to the New Hampshire Supreme Court that the evidence adduced at trial was insufficient as a matter of law to support the objected to portions of the divorce decree in this case. The State high court summarily affirmed the decision below with respect to these disputed issues in accordance with Rule 25(1)(b), N.H. Supreme Court Rules Annotated, which allows such a disposition, even where, as here, the trial record was not requisitioned by the State Supreme Court nor

reviewed in any fashion by it.

The United States Court of Appeals for the First Circuit ruled in Bundy v. Wilson, 815 F.2d 125 (1st Cir. 1987) that where substantial liberty interests were at stake, as in felony appeals, the New Hampshire Supreme Court could not enforce its Rule 25 in such a manner as to determine sufficiency of the evidence questions without some review of the evidence at trial. Id., at 129 n. 2, 133, 135. And transcripts are necessary for litigants to have that minimum mandated by the Due Process Clause, "an adequate opportunity to present [their] claims fairly in the context of a State's appellate process." Id., at 130, 131, quoting Ake v. Oklahoma, 470 U.S. 68, 77 (1985), Ross v. Moffit, 417 U.S. 600, 612 (1974)(same), and Evitts v. Lucey, 469 U.S. 387, 402 (1985) (same).

Your Petitioner submits that in the circumstances of this case, he was entitled to the same due process of law as the felony appellants in Bundy. In this case, substantial interests in custody and visitation with Petitioner's minor children were implicated in the divorce case, the very grounds of divorce were at issue, along with substantial property interests in the form of tens of thousands of dollars or marital assets and court-ordered child support payments. It is beyond dispute that the Due Process Clause of the Fourteenth Amendment protects both "liberty" and "property" in the form of substantial amounts of money. Board of Regents v. Roth, 408 U.S. 564 (1972).

The First Circuit in Bundy v. Wilson, supra, 815 F.2d, at 131, after analyzing the "three distinct factors that must be considered when evaluating a claim of due

process deprivation" announced by this Court in Mathews v. Eldridge, 424 U.S. 319, 335 (1976), concluded that what process was due litigants in the New Hampshire Supreme Court included some actual review of a trial record before summary disposition could be made of questions implicating sufficiency of the evidence at trial. Bundy v. Wilson, supra, 815 F.2d, at 133. The First Circuit reasoned that appellants are entitled to "a 'record of sufficient completeness' to permit proper consideration of their claims," quoting from Draper v. Washington, 372 U.S. 487, 499 (1963). The Court of Appeals went on to declare that

> Due process thus prohibits the New Hampshire Supreme Court from arbitrarily and capriciously deciding to decline to consider Bundy's sufficiency of the evidence claim. The state supreme court must necessarily make at least a rough assessment that the evidence is sufficient in order for its decision to accord with due process. We think it impossible for a reviewing court to make even a rough assessment of the

> sufficiency of the evidence without some reference to the trial court record. The accuracy of this rough assessment is especially important in New Hampshire for it will most likely determine the "desireability" of accepting the appeal

on the merits, or of "summarily" disposing of it under Rule 25(1). Bundy v. Wilson, supra, 815 F.2d, at 133.

Although there is no constitutional right to an appeal in the first place, the Court of Appeals shared the opinion of this Court that "when a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause." Bundy, at 129, quoting from Evitts v. Lucey, 469 U.S. 387, 401 (1985). Because it is "access to the record which makes appellate review meaningful," Bundy, at 130, quoting

Gardner v. California, 393 U.S. 367, 368 (1969), "appellants [are entitled to] seek to guard their interest in an accurate disposition of their appeals by obtaining procedural protections that will provide them with a full and fair opportunity to present their cases for review, and thus ensure the proper functioning of the adversary system," Bundy v. Wilson, supra, 815 F.2d, at 131, citing Gardner v. California, supra, 393 U.S., at 369.

The First Circuit's holding was squarely on due process grounds, emphasizing that an appeal to the New Hampshire Supreme Court is a litigant's one and only chance for review in New Hampshire, there being no intermediate court of appeals in the State system. Bundy, supra, 815 F. 2d, at 130.

Your Petitioner's appeal to the New Hampshire Supreme Court was indeed his

only available judicial review of a trial master's determination of his divorce case. In fact, Petitioner was at even greater disadvatange than the criminal appellants in Bundy because unlike them, Petitioner had no right of automatic review of federal claims on writ of habeas corpus in the United States District Court under 28 U.S.C. § 2241 et seq. Cf., Bundy, at 132 n.4 ("the federal district court in New Hampshire has, to some degree, been transformed into a state appellate court as a result of the state supreme court's utilization of the declination of acceptance procedure [under Rule 25(1)]. A federal district court entertaining a habeas petition... normally orders the production of a transcript of petitioner's trial, if one is not already available. Thus, New Hampshire state prisoners are apt to receive a fuller opportunity to present their claims

for review via a [federal] habeas petition than through the state appeal process.... [T]his...places a burden on the federal government" that is in no other State imposed on it); Bundy, at 136-142 (Appendix summary of the right of appeal in the several states, the District of Columbia, and the Commonwealth of Puerto Rico; New Hampshire unique in having only one appellate court and declining appeals or summarily affirming without reviewing any record).

Your Petitioner respectfully submits that due process required that the New Hampshire Supreme Court not summarily affirm the merits of the challenged portions of his divorce decree without some review of the record evidence to support it. Id., at 133.

This obvious deprivation of a right secured by the Fourteenth Amendment is a special and important reason to grant the writ.

II. THE NEW HAMPSHIRE CHILD SUPPORT GUIDELINES ARE UNCONSTITUTIONAL AS APPLIED TO PETITIONER IN HIS STATE DIVORCE CASE BECAUSE THEY ARBITRARILY, CAPRICIOUSLY, UNFAIRLY, AND UNREASONABLY MANDATE A FIXED PERCENTANGE OF THE NON-CUSTODIAL PARENT'S ADJUSTED GROSS INCOME FOR "CHILD SUPPORT" REGARDLESS OF THE ACTUAL NEEDS OF THE CHILD OR THE CHILD'S ACCUSTOMED LEVEL OF SUPPORT, REGARDLESS OF THE ABILITY OF THE OBLIGOR TO PAY THE FIXED AMOUNT IN HIS PARTICULAR CIRCUMSTANCES, AND WITHOUT ALLOWING DEDUCTIONS FOR THE OBLIGOR'S NECESSARY LIVING EXPENSES, HIS COSTS OF DOING BUSINESS, OR THE ACTUAL COSTS OF HIS GENERATING HIS PARTICULAR INCOME.

The text of the New Hampshire Child Support Guideline, N.H. Revised Statutes Annotated [RSA] Chapter 458-C, is set out in full at App. 42-44.

It cannot be disputed that under this "Guideline" the trial courts of New Hampshire almost invariably assign a fixed percentage of the obligor's—usually the father's—adjusted gross income as "child

support," whether or not this amount exceeeds the actual needs of the child or the child's historical level of support when the parents were living together, and regardless of whether the non-custodual, "obligor" parent can in fact afford to pay this amount in view of his individual financial circumstances.

This guideline was applied to your Petitioner in a routine, mechanical fashion, despite all of his complaints to the Superior Court and Supreme Court that to do so in his case was arbitrary, capricious, unreasonable, and unfair as a matter of Fourteenth Amendment due process of law and equal protection.

The myopic insistence of the New Hampshire courts to impose this confiscatory guideline in the heavy-handed manner here at issue abridged Petitioner's fundamental right not to be deprived of

property without due process of law, guaranteed to him by the Constitution of the United States. Board of Regents v. Roth, 408 U.S. 564 (1972)(Due Process Clause clearly protects substantial, i.e, not de minimus "property interests").

The tens of thousands of dollars of excess child support, above any demonstrated need of Petitioner's children, cannot fairly be termed "de minimis" in this case.

If the State courts wish to convey large sums of money to ex-spouses, usually the mothers, they can of course do so by providing for reasonable alimony or spousal support or maintainance awards. But to fix an arbitrarily high percentage of basically gross income of the non-custodial parent as the bench mark for "child support," is perforce unreasonable qua child support because such large amounts

cannot logically be termed "child support" where as here the children simply do not need and never have received such expensive "support." "Child support" is not deductible.

Your Petitioner documented his special expenses associated with travel to and from his highly technical job with the United States Air Force, and his need to keep up on training and education in his professional field, as necessary pre-requisites to earning the very income the State court desired to tax for "child support." Petitioner showed that his true net income, after deduction of these necessary and reasonable expenses, did not support the excessive child support awards actually mandated by RSA 458-C and in fact imposed in his case. But the trial court blindly applied the "Guideline" to arrive at the confiscatory child support award challenged here, rather than award alimony which would have been deductible to Petitioner for IRS purposes at least.

The New Hampshire Guideline was indeed mandated by Congress. See generally, Fitzgerald v. Fitzgerald, 566 A.2d 719, 722 (D.C.App. Oct. 13, 1989). However, the intent of Congress was to "establish[] realistic support obligations," id, at 725, not the arbitrary and capricious rules here disputed. Id, 724-725 ("non-custodial parents might be inclined to disregard [] support order[s which seemed] unreasonable" or "arbitrar[y]").

While ruling on narrower procedural grounds to invalidate the District of Columbia Child Support Guidelines, the Court of Appeals clearly opined that "there is a substantive [due process] right to a child support determination based upon the needs of the child and the parent's ability to pay, determined in light of the parent's available net income," Id., at 728, and when the

trial "court [as here] has failed to determine net income or the child's needs, this [appellate] court has remanded for further proceedings," id., at 729.

Your Petitioner requested such a remand in the New Hampshire Supreme Court and was summarily rebuffed without any consideration whatsoever.

Fixed-percentage-of-gross-income Child Support Guidelines are almost certain to be unfair, irrational, and arbitrary, and hence should be discouraged from proliferating among the States by this Court. Bandini Co. v. Superior Court, 284 U.S. 8, 18-19 (1931)(there must be "some rational connection between the fact proved [gross income] and the ultimate fact presumed [child support level]. The legislative presumption is invalid when it is entirely arbitrary, or creates an

invidious discrimination, or operates to deprive a party of a reasonable opportunity to present pertinent facts in his defense").

The instant Child Support Guidelines exclude from consideration the actual needs of the child, his historical, accustomed level of support, and the legitimate expenses of generating the very income sought to be levied against. It follows inescapably that they are arbitrary, capricious, and irrational as a result, and "invalid" under applicable cases of this Court and of the Courts of Appeals.

The large number of Amici Curiae in Fitzgerald submitted a vast body of authorities on this topic, and consideration by this Court would likely generate a solid basis for determination of this matter, likely to recur in cases among the several States in years to come.

These are special and important reasons for this Court to allow the writ in this case.

III. PETITIONER WAS DENIED FOURTEENTH AMENDMENT DUE PROCESS OF LAW BY HAVING THE MERITS OF HIS DIVORCE DETERMINED BY A MERE ATTORNEY—NOT A JUDICIAL OFFICER AS DEFINED BY STATE LAW—WHERE NO JUDICIAL OFFICER EVER HEARD OR REVIEWED DISPUTED ISSUES DE NOVO OR REVIEWED ANY RECORD OF THE TRIAL PROCEEDINGS.

Another patent defect in the State proceedings, of constitutional dimension, was the failure and refusal of the State to afford Your Petitioner any hearing by a judicial officer prior to or after the determination of the merits of his divorce case.

A "judicial officer" in New Hampshire is nominated and appointed by the Governor and Executive Council pursuant to Part II, Articles 46 & 47 of the New Hampshire Constitution. Opinion of the Justices, 128 N.H. 17, 19, 509 A.2d 746 (1986). The private attorney who sat as a "master" in this case was "not so appointed, tenured or empowered" as a "judicial officer" as

a matter of law. Id., at 20. He lacked the "necessary characteristic of a judicial officer [, namely] the authority to render judgment to determine issues that are properly raised before the judicial branch," id., at 19, citing Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657, 718 (1838) and N. H. Constitution, Part I, Art. 37 and Part II, Art. 72-a. Accordingly, this master had no jurisdiction, "that final authority," Opinion of the Justices, supra, 128 N.H., at 19, to determine issues in Petitioner's divorce case. Ibid, citing R. Wiebusch, 5 NEW HAMPSHIRE PRACTICE: CIVIL PRACTICE AND PROCEDURE, Ch. 39 (Equity, 1984). See especially, id., 5 Wiebusch, § 1380, n. 85 (Supp. 1989)("The [N.H.] Supreme Court has recently acknowledged that the Superior Court judge usually gives a Master's Report only cursory review before approving and signing it. State ex rel. Casinelli v. Bourgeois, 127 N.H.

754, 506 A.2d 351 (1986)").

This "cursory review" in Your Petitioner's case included summary denials by the trial court of requests for de novo rehearing of disputed issues by a duly commissioned Superior Court Justice and denial of Petitioner's motions for production of the transcripts of proceedings before the Master, for at least appellate-type review by a Justice as a bare minimum. Thus, there was no review or hearing whatever by any judicial officer as respecting any disputed matter in this case.

The lack of hearing by any judicial officer, and the consequent sole and unreviewed determination of all issues by one not qualified to decide them—i.e., the attorney-master lacking jurisdiction or authority to determine issues—worked a total deprivation of Fourteenth Amendment due process of law, to Petitioner's

disadvantage and prejudice.

The United States Court of Appeals for the First Circuit reviewed a similar challenge to the "master system" arising in a New Hampshire divorce case, see, Witte v. Justices of the New Hampshire Superior Court, 831 F.2d 362 (1st Cir. 1987), and concluded that where the State litigant had had the opportunity for de novo rehearing or some other review of the proceedings before the Master by a true judicial officer, the State system passed constitutional muster as a matter of due process of law, because it provided essentially the same judicial determination or at least de novo review afforded criminal defendants in Federal Courts under the Federal Magistrate Act upheld in United States v. Raddatz, 447 U.S. 667, 677-681 (1980). See, Witte v. Justices, supra, 831 F.2d, at 364. Dr. Witte had

not shown that his trial counsel had ever requested hearing or rehearing de novo by a regular Justice of the New Hampshire Superior Court, or ever requested production of the transcripts of proceedings before the Master for appellate-type review by a Justice. Your Petitioner, by contrast, repeatedly requested implementation of such procedures in timely written motions before and after each hearing by the "master," and by oral requests during the trials and hearings in this case.

This Court pointed out in Raddatz, 447 U.S., at 677, by its citation to Morgan v. United States, 298 U.S. 468, 481 (1936) ("[t]he one who decides must hear" the case or address himself to the evidence in some fashion) that a master or magistrate system can survive constitutional challenge only if a litigant is heard in some form by a judicial officer on "those portions

of the magistrate's report to which objection is made," as stated in Witte v. Justices, supra, 831 F.2d, at 364, citing Raddatz, supra. At the barest minimum, the State litigant must be allowed to "hav[e] proceedings before a master transcribed and... present[ed] to a trial judge [as] an adequate record from which to obtain judicial review of the master's findings." Witte, 831 F.2d, at 363 n. 2.

Here, Petitioner was afforded neither hearing by a justice, rehearing de novo of disputed issues, or even appellate-type review of the record of proceedings at trial. Cf., Bundy v. Wilson, 815 F.2d 125, 129 & n. 3, 133 (1st Cir. 1987) (meaningful appellate review of trial proceedings is impossible without review of transcripts or some other adequate record of the trial as a matter of due process of law).

Thus, in contrast to the type of

review or rehearing de novo afforded Federal litigants before a District Judge on objected-to portions of a Magistrate's report and recommendation, in New Hampshire the Superior Court justices routinely give the master's report "only cursory review," and nothing else. This is not due process of law, as it was clarified by this Court in Morgan v. United States, supra, 298 U.S., at 477-481. See especially, id., at 480-481 ("a judicial proceeding"..."is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence....If the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given" that is a "fundamental procedural requirement" of our Constitution).

In New Hampshire, it is a matter of State law that only the Superior Court Justice determines divorce cases. Opinion of the Justices, supra, 128 N.H., at 19-21; Witte v. Justices, supra, 831 F.2d, at 363. Yet it is now ingrained practice in New Hampshire that judges do not afford any review of evidence or argument in divorce cases at all, but "only cursory review" of "a Master's Report" after it is written, "before approving and signing it." No further review, even appellate review, is practically available in New Hampshire. R. Wiebusch, 5 NEW HAMPSHIRE PRACTICE: CIVIL PRACTICE AND PROCEDURE, Ch. 39 (Trial by Masters). Cf., Section I of this Petition, ante, 12-19 (summary dispositions of appeals in New Hampshire Supreme Court without review of any trial record).

Since it is undisputed that no judicial officer heard or reviewed evidence on disputed issues in this case, and the master who heard and decided the case had no authority to do so as a clear matter of State law, a palpable violation of the jurisdiction and hearing requirement of the Due Process Clause of the Fourteenth Amendment to the United States Constitution appears in this case.

This fundamental constitutional defect, infecting an entire State court system as a direct response to the nationwide increase in litigation volume experienced by all American courts, is a special and important reason for this Court to grant this Petition and set some guidelines for the States in these respects. Citizens deserve more than "routinely rubber stamped" justice from their State Courts. Witte v. Justices,

supra, 831 F.2d, at 363 n. 2. This practice should be stopped now by this Court, before it spreads elsewhere.

CONCLUSION

For all of the foregoing reasons, the petition for writ of certiorari to the Supreme Court of New Hampshire should be granted.

Because the constitutionality of two State laws is challenged herein, Petitioner has notified John P. Arnold, Esq., Attorney General of the State of New Hampshire, of the applicability of 28 U.S.C. § 2403(b) and served him with copies of this Petition.

Respectfully submitted,

June 25 , 1990

Carl P. Scheidegg

Carl P. Scheidegg, Pro Se
48 Heather Court
Nashua, N.H. 03062

(603) 886-0080

cc: Honey Charlotte Hastings, Esq.,
Counsel for Respondent

89-2019

(2)

JUN 25 1990

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

CARL P. SCHEIDEGG,

Petitioner

versus

SHIRLEY FERGUSON,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW HAMPSHIRE

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

Carl P. Scheidegg
Pro Se
48 Heather Court
Nashua, NH 03062
(603) 886-0080

June 25, 1990

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 89-364 Shirley Ferguson v. Carl P. Scheidegg the court upon January 15, 1990 made the following order:

Defendant's motion for summary disposition and plaintiff's motion for summary affirmance are denied as untimely filed. See Rule 25(2). Case is accepted on questions 1, 2, 4, 12, and 18. Decision below is summarily affirmed in accordance with Rule 25(1)(b) with respect to the remaining questions. Processing of question 12 is stayed pending the decision in 89-344, Philip B. Blanchard v. Judy G. Blanchard. The remaining questions accepted shall be briefed and argued. Defendant's brief shall be filed on or before February 15,

1990; plaintiff's brief shall be filed on or before March 17, 1990; hearing April/May 1990 session.

Since defendant has responded to any pleadings filed by plaintiff which had responses due during the time defendant alleges he was out of the State under military orders, defendant's motion for enlargement of time is moot.

Distribution:
Hillsborough County Superior Court
Honey Charlotte Hastings, Esquire
Mr. Carl P. Scheidegg
Donna R. Craig, Supreme Court
File

Ralph H. Wood,

Clerk

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 89-364 Shirley Ferguson v. Carl P. Scheidegg the court upon February 27, 1990 made the following order:

Defendant's motion to reconsider the order of 15 January 1990 is denied.

Distribution:
Honey Charlotte Hastings, Esquire
Carl Scheidegg, Esquire
File

Ralph H. Wood,

Clerk

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS SUPERIOR COURT

Shirley Ferguson

v.

Carl Scheidegg

86-M-2103

ORDER

The above-captioned matter was specially assigned for a continuation of the hearing on the merits today, January 5, 1989. The defendant filed a motion to continue this hearing which was denied by the Court on December 29, 1988. Plaintiff is present today with her attorney, and the defendant has failed to appear. It is noted that he has filed a motion to reconsider the denial of his previous motion to continue today's hearing. Attached to that motion appears

to be a formal request to his superiors in the military for a leave of absence so that he may attend today's hearing. His request characterizes today's hearing as being devoid of "critical" issues and not of any urgency. The Master strongly objects to this characterization noting that the libel for divorce was filed on December 31, 1986. It was anticipated that the matter would be completely heard on the merits today. Furthermore, issues which the defendant described as not being critical involve those affecting the future of the parties and the minor children. The defendant was advised at the close of the last hearing that the Superior Court, recognizing the importance of his position with the U.S. Air Force, would attempt to accommodate his schedule to a reasonable extent but that a final hearing would be scheduled

on the basis that the business of the Superior Court was of equal importance.

In view of the foregoing circumstances, the Master recommends that the following decree be entered:

1. The plaintiff's motion for immediate divorce is now reconsidered and granted.

2. Divorce decreed. Cause, irreconcilable differences which have caused the irremediable breakdown of the marriage.

3. Defendant's motion to reconsider the denial of his motion to continue is granted. However, the defendant shall advise the Clerk of Court within seven (7) days of dates which he will be available to complete the final hearing on the merits. Absent the receipt of such information, the Clerk of Court shall set this matter for final hearing

as the Court docket permits.

4. Defendant's motion to permanently restrain plaintiff from unilaterally subjecting minor children to mental health counseling by a "doctor of education and/or his wife" - deferred to final hearing.

5. Plaintiff's amended motion for contempt (#78) is deferred to final hearing except that: The defendant shall refrain from discussing issues of the divorce with the children.

6. Plaintiff's motion concerning escrow account (#85) is deferred to final hearing.

7. Defendant's motion for reconsideration by Master and/or motion for de novo determination of portions of Master's report and recommendation (#86) is denied. Child support is an issue being considered at the final hearing.

8. Plaintiff's motion for contempt (#88); in view of the absence of a denial or a defense relating to the payment of child support, the Master determines that an arrearage exists in the amount of $1,700 to date. Said sum shall be paid by the defendant within seven (7) days. Failure to comply may result in the issuance of a capias for his arrest so that he may be brought before the Court to show why he should not be held in contempt.

9. Plaintiff's motion concerning proceeds of Florida sale (#99) is granted. The Master notes that the time within which the defendant has to file an objection has not passed but decision on this motion is merited given a letter submitted by plaintiff's counsel from Old South Title and Abstract Company dated December 20, 1988, and given the terms of

the temporary decree.

10. Plaintiff's motion for an advance on property settlement (#100) is granted to the extent of $10,000 to be deducted against plaintiff's final award of property.

11. Defendant's motion to quash subpoena ducus tecum (#106) is moot given the defendant's absence. However, the defendant shall provide to plaintiff's counsel those documents listed in the subpoena under subsections A, B, and C as requested. The Master rules that funds inherited by the defendant from his father are relevant to the issues in this matter and must be considered in the overall disposition of financial awards. Lawlor v. Lawlor, 123 N.H. 163 (1983).

12. Defendant's objection to motion for contempt and motion to vacate paragraph 2, page 5 of Master's order of

10-5-87 (#92) is denied.

13. Plaintiff shall be awarded attorney's fees and costs as follows:

a. Fees incurred as a result of the motion for continuance today in an amount not to exceed $600;

b. relating to the defendant's motion for reconsideration dated December 9, 1988, in the amount of $120;

c. relating the defendant's motion to vacate in the amount of $120.

14. Child support in the amount of $1,500 per month shall be paid by the defendant pursuant to an attachment of his military pay, and the Order Concerning Payment of Child Support attached hereto is approved and incorporated herein.

All motions not herein specifically-addressed shall be considered at the final hearing. Decree effective forthwith.

January 5, 1989 /s/ A.S. Love
DATED PRESIDING MASTER

Recommendation of Master approved, decree entered in accordance therewith.

Jan.5, 1989 /s/ Walter Murphy
DATED JUSTICE OF THE SUPERIOR COURT

STATE OF NEW HAMPSHIRE

HILLSBOROUGH COUNTY 86-M-02103
SUPERIOR COURT JANUARY 1989

Shirley Ferguson

against

Carl Scheidegg

ORDER CONCERNING
PAYMENT OF CHILD SUPPORT

1. The US Air Force, upon service of this order, AFASC/JA, Denver, Colorado, 80279-5000, by certified mail, shall withhold from the military pay of:

Carl Scheidegg
ss # 141-38-0831

on a monthly basis, one thousand, five hundred dollars ($1,500).

2. Payment shall made directly to:

Shirley Ferguson
19B Deerwood Drive
Amherst, NH 03031

3. Payment shall be made without further action of this court and without any action or authority of the defendant, Carl Scheidegg.

4. These payments shall continue until further order of this court.

Recommended by,

/s/ A. S. Love, Master — January 5, 1989
A. S. Love, Master — Date

Recommendation of the master approved, decree entered in accordance therewith,

/s/ Walter Murphy — Jan. 5, 1989
Justice of the Superior Court — Date

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

Hillsborough, ss. January 20, 1989

NOTICE OF DECISION

No. 86-M-2103

Shirley Ferguson v. Carl Scheidegg

You are hereby notified that on January 20, 1989 the following order was entered in the above matter:

RE: Defendant's "Completed" Motion to Reconsider, etc:

Defendant's Completed Motion for Reconsideration is denied. Specifically, as to the granting of the divorce, evidence relating to the grounds for divorce had been previously submitted by both parties.

A. S. Love, Master

(Groff, J.)

Copy to: Honey Charlotte Hastings, Esq.
Carl Scheidegg, 48 Heather Court, Nashua, NH 03062

John M. Safford, Clerk
300 Chestnut St.
Manchester, NH 03101
Tel: (603) 627-5625

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT.

86-M-2103 June Term, 1989

Shirley Ferguson v Carl Scheidegg

FINAL DECREE

After considering the evidence presented over a period of three (3) days, the Master recommends that the following decree be entered:

1. The parents shall share legal custody of the minor children, Wendy (age 13) and Jesse (age 6). Both shall participate in decisions concerning major aspects of the children's lives such as schooling, medical and dental care, and

religious issues. Additionally, each of the parents shall be entitled to records concerning these issues.

2. The mother shall keep the father advised as to important school, religious, social and sporting events involving the children.

3. Physical custody of the minor children is placed with the plaintiff and the defendant shall be entitled to reasonable visitation as follows:

   a) every other weekend from Friday at 6 p.m. through Sunday at 11 p.m.

   b) alternate legal holidays

   c) Christmas Eve shall be alternated with Christmas Day

   d) on Father's Day (and, the mother shall be entitled to be with the children on Mother's Day)

e) for an extended vacation during a portion of the school vacations, but as to this, the defendant shall provide at least 30 days written notice to the plaintiff

4. The parties shall, if they cannot agree to terms for equal division, sell the following investment assets and thereafter, the proceeds shall be equally divided between them:

a) Templeton Growth Fund

b) Templeton World Fund

c) Oppenheimer Special Fund

d) Silver Screen Partnership

e) Century XV Partnership

5. The plaintiff shall maintain health insurance for the children's benefit. Uninsured health care (including dental and counseling) shall be equally paid for by the

parties.

6. The children's college fund accounts shall be placed into a trust for each child's education. The trustee shall be a professional qualified to manage such funds agreeable to both parents. The purpose of the trust shall be to provide for the children's post-secondary education. Half of the trust existing when Wendy enters college, plus any earnings on this portion, shall be available for her. The remainder shall be for Jesse. The intent is to use both principal and interest. The trustee shall allocate these amounts over four (4) school years. He shall disburse the money directly to the educational institution or any other education

related service. Any amount remaining at age twenty-five (25) shall be paid to the child. The trustee shall make no disbursements other than those provided herein, except upon further order of the Court.

7. The parties shall equally be responsible for the payment of all income tax due on the children's accounts for all tax years, and for any tax preparation costs.

8. If either child's college trust fund fails to cover his/her costs, the parents shall contribute to the costs as is reasonable under the circumstances. Each child shall take reasonable steps to secure all available grants and scholarships.

9. The property awards are intended to represent an unequal but equitable

division between the parties. The plaintiff is allocated approximately 70% to the plaintiff and approximately 30% to the defendant. The factors considered in this unequal division are: a) the long term marriage, b) the need for the plaintiff as custodial parent to secure proper and affordable housing, c) the disparity in opportunity for each party to acquire capital assets in the future, and d) the substantial legal fees incurred by the plaintiff in litigating this divorce. As to the last factor, the Master is persuaded that, while the defendant was within his legal rights to dismiss his counsel and proceed pro se, this choice, made in the midst of trial, resulted in

unnecessarily prolonged and complicated litigation and added to the plaintiff's legal costs.

TO THE PLAINTIFF, free and clear of any interest of the defendant:

a) her IRA

b) $9,030 from the Indian Head accounts (P EX 14)

c) 70% of funds in the Indian Head accounts remaining after the defendant has been disbursed $10,000 to equalize the $10,000 advanced to the plaintiff during the pendency of the trial (see, order dated 1/25/89-#115)

d) household furniture and furnishings with the exception of those specifically awarded to the defendant in paragraph

e) the Plymouth automobile

TO THE DEFENDANT, free and clear of any interest of the plaintiff:

a) the Port Malabar property

b) his IRA

c) $10,000 from the Indian Head accounts

d) 30% of the Indian Head accounts

e) the Volvo and 1989 Acura automobiles

f) cherry table (heirloom of his parent's home), antique copper pan an planter (brought from Israel by the defendant), small speakers (part of his old stereo system), basketball pole and backboard removed from parties' home at 5 James Way

g) the Ford truck

10. The defendant is awarded the assets and funds which he has inherited due to the death of his father, Eugene Scheidegg. The plaintiff is, thus, denied, her request to share in since it was

inherited by the defendant after the parties' separation and it was not considered "marital" property subject to division, but it was considered as part of the defendant's financial circumstances.

11. The plaintiff is awarded her interest in the property located in Lyons, New York.

12. The defendant seeks reimbursement for expenses he was ordered to pay pursuant to the temporary order dated October, 1987. The expenses which predated the temporary decree were paid by the defendant either from his salary or from joint funds. As to these, his request is denied. As to expenses paid after the temporary decree, the Master at that time allowed

for an ongoing limited reimbursement of expenses to be paid by the defendant on behalf of the family. Although it was anticipated that some of the defendant's inheritance would have to be used the Master believed that such was reasonable under the circumstances. The defendant had complete control of a substantial portion of his own personal expenses and was free to invade his inheritance to pay for such. Based upon the financial evidence the Master finds that the defendant failed to prove by a preponderance of the evidence that the substantial dissipation of his inheritance was entirely related to his financial responsibilities under the decree as opposed to a

choice he made relating to his personal lifestyle. At the time that the Master entered her order allowing for reimbursement, she considered the military and investment income of the defendant (and parties), his reasonable and necessary personal expenses, and the joint expenses for which he would be responsible.

From the "escrowed" funds, the defendant shall be entitled to a TOTAL reimbursement of $27,696.45 of which $20,649.57 had already been disbursed as of February 22, 1989.

13. From the "escrowed" funds the defendant shall be reimbursed for a) children's tax bills $1,702.91, b) accountant's bill (CPA) $440.

14. Each party shall be responsible

for complying with applicable IRS rules in accounting for one-half (1/2) of the taxable gain to be reported when the 1988 Form 2119 is filed.

15. The remaining mortgage interest deductions for the 5 James Way residence and the Water Oaks Townhome shall be divided equally between the parties for income tax purposes.

16. The consideration of the defendant's military pension as an asset subject to distribution between the parties was strongly opposed by the defendant. It was his belief that this pension was an asset belonging solely to him because he had "put his life on the line" and not his wife. While the efforts and sacrifices of the

defendant are acknowledged, respected and sincerely appreciated, the plaintiff's role as a military wife and mother of the children of a servicemen, and the sacrifices that demands cannot be ignored. Under the circumstances of this case, the parties are entitled to equally share in that portion of this asset which was earned during the marriage. This retirement will vest in December 1989 and at that time, after 20 years of service and should the defendant elect to retire, the pension will immediately payable at the rate of $1846 monthly. See, Defendant's Exhibit 3. Pursuant to the formula in Hodgins v Hodgins, 126 NH 711 (1985), the plaintiff would

be entitled to receive 38.124% of each monthly payment. A Qualified Domestic Relations Order shall be submitted for the Court's approval and incorporation herein.

17. The defendant shall pay child support of $1,357 monthly which is 33% of his present net military income of $4,115. The amount of support shall be paid directly to the plaintiff through the present military allotment. Pending any appeal, however, the temporary order of October 13, 1987 shall remain in effect. Rollins v. Rollins, 122 NH 6, (1982). The amount of support shall be adjusted annually on the anniversary date of this decree based upon the defendant's net income on his most recent Federal

tax return and statements of military compensation and pension. He shall submit the necessary documentation to the plaintiff on or before the anniversary date. Support shall be payable as long as a child is unemancipated. A child is such if living with the custodial parent, unmarried and either under 18 or a full-time student and under age 22. When there is only one unemancipated child remaining, support shall decrease to 25% of net income.

18. In the future and as may be applicable, support shall be paid in one or more of the following manners: a) by wage assignment, b) by the present allotment on military pay, or c) by assignment

on the defendant's portion of his monthly military retirement pay.

19. The defendant shall maintain at least $160,000 (which is the current amount according to his financial affidavit) in life insurance in effect on his life, as long as support is owed. This shall be payable to the plaintiff in trust for the children.

20. The defendant shall reimburse to the plaintiff within 7 days of this decree: a) $705 for her 1987 therapy bills not previously reimbursed as ordered, b) $243.50 for 50% of Wendy's counseling expenses. A 10% daily penalty shall be payable to the plaintiff for failure to pay any amounts owing after 7 days.

21. All motions and/or requests not

granted herein or otherwise disposed or orally on the record at hearing, are denied.

22. Plaintiff's Revised Requests for Findings of Fact

GRANTED: 1-11 ($62,832 or $5,236 monthly), 12, 13 ($3,479) 14,15,17-26 ($20,649.57 reimbursed and an additional $3,190.85 is a marked on Defendant's Exhibit A as due and undisputed for a total of $23,840.42), 27-33, 35(as to 38.125% only), 36,37-71,74,75. Neither granted nor denied: 72,73,78. Remainder denied. Specifically as to #34, the military has zero present value as it does not vest until December 1989. However, once vested the value of the pension as of the date of separation in 1986 would

be approximately $303,512.

23. Defendant's Amended Request for Findings of Fact and Rulings of Law

GRANTED: 1-4,6-31(amend to "primary" homemaker),32,34,36 a-g(as to net proceeds only) h in total, 38-43(also used to pay personal expenses of the defendant) 44,49,51 (unvested), 52,54(first sentence only),56,57(although counseling apart from CHAMPUS was warranted),60 (as to the tax expenses only), 62,63,72,73,E,F,G,H,I,J,K,O. Neither granted nor denied: 53,64-69, B,C,D. Remainder are denied.

24. The defendant shall be entitled to the Federal tax dependency

exemption for the older child providing he is current with his total child support obligation for each year. The exemption for the younger child is awarded to the plaintiff. The plaintiff shall execute the appropriate form each year, at least 30 days prior to April 15th.

/s/A. Love
Master 6/5/89

Alice S. Love
Marital Master

Master's recommendation approved.

Decree in accordance therewith.

/s/ Justice Pappagianis
Presiding Justice

Dated: June 5, 1989

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT

86-M-2103 July Term, 19 89

Shirley Ferguson v Carl Sheidegg

ORDER

After reviewing the pleadings, evidence and decrees, the Master recommends that the following decree be entered:

1. The Court acknowledges receipt of the Plaintiff's Proposed Qualified Domestic Relations Order (157) and the Master approves such and incorporates it into the Final Decree.
2. Referring to Plaintiff's Motion for Clarification:

a) Paragraph 3 of the Final Decree shall be clarified thusly: Sunday at 6:30 p.m.

b) Paragraph 12 is clarified thusly: If check #105 was indeed paid to the defendant then the present reimbursement due defendant would be $3,856.03

c) The Final Decree shall be amended to include a paragraph 25 thusly: Taxes due on interest, dividends or other income earned or deductions for losses in 1988 on joint investments and the Indian Head escrow account shall be split equally with the exception of the "inheritance funds" which shall inure to the benefit or detriment of

the defendant.

d) The plaintiff may be reimbursed forthwith $840 attorney's fees awarded on January 5, 1989 from the defendant's share of the Indian Head accounts.

e) Paragraph 13 shall be corrected to include that reimbursement is limited to 50% of the amounts described therein

3. Defendant's Motion for Clarification (160) is granted as follows: The $9,030 is derived from the Port Malabar property value of $5,000 and the difference between the plaintiff's IRA and the defendant's IRA as of 1986 [$11,954 minus $7,924]

4. Defendant's Motion for

Reconsideration (161) is denied.

5. Defendant's Motion for Reconsideration (162) is denied.

6. Defendant's Motion to Compel Certain Payments shall be scheduled for hearing unless the parties advise the Clerk in writing that it may be disposed of without hearing and only upon the pleadings themselves.

7. All requests not specifically addressed herein are denied.

/s/ A. Love

Master 7/3/89

Master's recommendation approved. Decree in accordance herewith.

/s/ Justice Pappagianis

DATED: July 3, 1989

STATE OF NEW HAMPSHIRE

HILLSBOROUGH COUNTY 86-M-02103
SUPERIOR COURT JUNE 1989

Shirley Ferguson

against

Carl Scheidegg

QUALIFIED DOMESTIC RELATIONS ORDER

I, Shirley Ferguson, ask the court to grant the following qualified domestic relation order:

1. The pension participant is Carl Scheidegg; 48 Heather Court, Nashua, NJ; s.s. # 141-38-0831.

2. Carl Scheidegg is a participant in the U. S. Air Force Retirement Plan.

3. Shirley Ferguson, is hereby designated as alternate payee with rights as set out in the document.

4. Shirley Ferguson's address is 25 Pettingale Drive, Amherst, NH; s.s. # 085-40-5008.

5. Carl Scheidegg is eligible to retire on 1 December 1989 after 20 years of service.

6. Carl Scheidegg began employment with the U. S. Air Force on 17 November 1969.

7. The parties were married on 17 July 1971.

8. The alternate payee shall receive 38.125% of the participant's benefits.

9. The participant shall elect the survivor benefit plan naming Shirley Ferguson as surviving spouse.

10. The payments shall commence when participant receives his first payment under the plan and end on the date of death of the last to die between the participant and spouse.

Master's recommendation approved.

Decree in accordance therewith.

_____	/s/ A. Love
Presiding Justice	Master
_____	_____
Date	Date

NEW HAMPSHIRE

SUPREME COURT RULES

RULE 25. SUMMARY DISPOSITION

(1) The supreme court may at any time, on its own motion and without notice or on such notice as it may order, dispose of a case, or any question raised therein, summarily. An order of summary affirmance under this rule may be entered when (a) no substantial question of law is presented and the supreme court does not disagree with the result below, or (b) the case includes the opinion of the lower court, which identifies and discusses the issues presented and with which the supreme court does not disagree, or (c) the case includes the decision of the administrative agency appealed from, and no substantial question of law is presented and the supreme court does not find the decision unjust or unreasonable, or (d) other just cause exists for summary affirmance, in which case the order shall contain a succinct statement of the reason for affirmance. An order of summary dismissal under this rule may be entered when the supreme court has not considered the merits, because the court clearly lacks jurisdiction, or other just cause for summary dismissal exists, in which case the order shall contain a succinct statement of the reason for dismissal. An order of summary reversal may be made by the supreme court under this rule for just cause and the order shall contain a succinct statement of the reason therefor.

NEW HAMPSHIRE

REVISED STATUTES ANNOTATED

CHAPTER 458-C

CHILD SUPPORT GUIDELINES

458-C:1 Purpose.
458-C:2 Definitions.
458-C:3 Child Support Formula.
458-C:4 Application of Guidelines.
458-C:5 Adjustments to the Application of Guidelines Under Special Circumstances.

458-C:1 Purpose. The purpose of this chapter is to establish a uniform system to be used in the determination of the amount of child support, to minimize the economic consequences to children, and to comply with applicable federal law by using specific guidelines based on the following principles:

I. The custodial parent shall share responsibility for economic support of the children, irrespective of any non-custodial parent's child support order.

II. The children in an obligor's initial family are entitled to a standard of living equal to that of the obligor's subsequent families.

III. The percentage of net income paid for child support should vary according to the number of children and, with limited exemptions, not according to income level.

458-C:2 Definitions. In this chapter:

I. "Gross income" means all income from any source, whether earned or unearned, including, but not limited to, wages, salary, commissions, tips, annuities, trust income, lottery or gambling winnings, interest, dividends, net rental income, self-employment income, alimony, business profits, pensions, bonuses, and payments from other government programs (except public assistance), including, but not limited to, workers' compensation, veterans' benefits, unemployment benefits, and disability benefits.

II. "Net income" means the obligor's gross income, less:

(a) actual federal income taxes payable;

(b) actual state taxes payable;

(c) FICA and other payroll taxes;

(d) any self-employment taxes;

(e) mandatory, not discretionary, retirement contributions;

(f) court-ordered or administratively-ordered support actually paid to others, for adults or children.

III. "Obligor" means the parent responsible for the payment of child support under the terms of a child support order.

IV. "Obligee" means the parent who receives the payment of child support under the terms of the child support order.

V. "Percentage" means the numerical figure that is applied to net income to determine the amount of child support.

458-C:3 Child Support Formula.

I. Number of Children	Percentage of Net
1	25 percent
2	33 percent
3	40 percent
4 or more	45 percent

II. When the obligor provides medical insurance coverage for the minor children of the parties, the net income amount used to calculate the percentage under paragraph I of this section shall be reduced by 50 percent of the actual amount paid for this insurance by the obligor.

III. The number of children in the same household for which child support is paid is the determining factor in the percentage applied against net income.

458-C:4 Application of Guidelines.

I. Subject to the provisions of RSA 458-C:5, these guidelines shall be applied in all child support cases and in any order modifying a support order, unless the specific issue of child support obligation has been resolved by agreement of the parties.

II. If the guidelines are not used the presiding officer shall explain in the order why they are not used.

III. When considering a request for an original support order or modification of a support order under this chapter, the court shall take into account any stepchildren for which either party may be responsible.

IV. When arrangements for child support are delineated in an agreement between the parties, and not made according to these guidelines the presiding officer shall certify, or otherwise make it a matter of record, that he finds the terms of the agreement reasonable, and he shall state in the record his reasons for this determination.

458-C:5 Adjustments to the Application of Guidelines Under pecial Circumstances.

I. Special circumstances, including, but not limited to, the following, ıay result in adjustments in the application of the support guidelines:

(a) ongoing extraordinary expenses of the child, the obligee or the ɔligor, including daycare costs and state taxes paid;

(b) significantly high or low income of the obligee or obligor;

(c) the economic consequences of the presence of stepparents or tepchildren;

(d) extraordinary costs associated with the obligor's exercise of his hysical custodial rights;

(e) the economic consequences to either party of the disposition of a ıarital home made for the benefit of the child;

(f) the opportunity to optimize both parties' after-tax income by taking ıto account federal tax consequences of an order of support;

(g) state tax obligations;

(h) split or shared custody arrangements;

(i) other special circumstances found by the court to avoid an nreasonably low or confiscatory support order, taking all relevant ircumstances into consideration.

II. The party relying on the provisions of this section shall demonstrate pecial circumstances by a preponderance of the evidence.